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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project.

Application 06-08-010
(Filed August 4, 2006)

**ASSIGNED COMMISSIONER'S RULING ADDRESSING
NEWLY DISCLOSED ENVIRONMENTAL INFORMATION**

OVERVIEW

Pursuant to the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Public Utilities Commission (Commission) and the United States Bureau of Land Management (BLM) are preparing a joint environmental impact report and environmental impact study (EIR/EIS) to evaluate the environmental impacts of the proposed Sunrise Powerlink Transmission Project (proposed Sunrise Project).

Under CEQA, an EIR must "describe a reasonable range of alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." 14 Cal. Code Regs. Sec. 15126.6(a). The Commission, as the CEQA Lead Agency, is the entity legally responsible for developing a list of CEQA project objectives and analyzing a reasonable range of alternatives in the EIR/EIS. This obligation is proactive in that the Commission, in collaboration

with the BLM, the federal Lead Agency, cannot rely only on public comment. The agencies must independently select and analyze a reasonable range of potential alternatives that avoid or substantially lessen any of the significant impacts of the proposed project.¹

Additionally, all relevant parts of a project, including reasonably foreseeable future expansion and other activities that are part of the project, must be included in the Project Description. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376. Ideally, a complete discussion of such activities is included in the initial project description contained in the proponent's environmental assessment (PEA) so that a full range of potential alternatives to the project that would feasibly attain most of the basic project objectives, including any reasonably foreseeable future expansion, is identified at the outset of the Lead Agency's environmental review.

Both CEQA and NEPA require the study of actions related to a proposed project in the environmental document. These "related actions" include "connected actions," "indirect impacts," and "cumulative impacts." Connected actions are activities that are related in such a way that they should be considered parts of a single action. Connected actions, because they are closely related, must be analyzed in the same NEPA document as the proposed action.² 40 CFR Sec. 1502.4(a); *see also Thomas v. Peterson* (9th Cir. 1985) 753 F. 2d 754, 758.

¹ 14 Cal. Code Regs. Sec. 15126.6(a) ("The Lead Agency is responsible for selecting a range of project alternatives for examination and must disclose its reasoning for selecting those alternatives."); 40 CFR Sec. 1502.14.

² CEQA has an analogous standard in prohibiting piecemealing or segmenting of projects. *See* Public Resources Code Sec. 21000, *et seq.*; 14 Cal. Cod of Regs. Sec. 15378(c).

Actions which are considered a “connected action” under NEPA include actions that: (1) are automatically triggered by the proposed action; (2) cannot or will not proceed unless the proposed action occurs first or simultaneously; or (3) are interdependent parts of a larger action and depend upon the larger action for their justification. 40 CFR Sec. 1508.25(a)(1).

Where individual activities are not related in such a way as to be considered “connected actions,” they will generally be analyzed either as indirect impacts of the proposed project or considered in the cumulative impact analysis as a project with impacts that, when viewed in connection with the proposed project, are cumulatively significant. Under CEQA and NEPA, indirect impacts are analyzed in the same manner as direct impacts. 14 Cal. Code Regs. Sec. 15358; 40 C.F.R. Sec. 1508.8(b). Cumulative impacts must be discussed when the project’s incremental effect is “cumulatively considerable” when viewed in connection with the effects of past, present and reasonably foreseeable future projects. 14 Cal. Code Regs. Secs. 15065(a)(3), 15130(a), 15355; 40 C.F.R. Sec. 1508.7.

The Draft EIR/EIS for the proposed Sunrise Project was scheduled to be published for public comment on August 3, 2007. However, as a result of new information provided by San Diego Gas & Electric Company (SDG&E) both in its rebuttal testimony filed June 15, 2007, and in its testimony in the hearings that began July 9, we have identified at least three new issues that must be considered for analysis in the Draft EIR/EIS in order for the Commission and BLM to comply with the CEQA and NEPA requirements set forth above.

DISCUSSION

The Commission Must Reexamine the Alternatives Selected For Evaluation in the EIR/EIS in Light Of The Newly Disclosed Information Regarding Future Expandability

As part of ensuring that our environmental review process is rigorous and will withstand legal scrutiny, I am committed to fully studying alternative routes for the project that avoid or minimize potential significant impacts on Anza-Borrego Desert State Park, as required by CEQA and NEPA.³ To do this, I have directed Commission staff to provide complete public disclosure and multiple opportunities for public comment on the scope of potential alternatives, particularly those that lessen or avoid potential impacts on Anza-Borrego Desert State Park. For example, we have allowed for two rounds of public scoping meetings on environmental issues even though only one round of scoping is required by law. We did this to ensure that all parties, including the project proponent, had ample opportunity to advise us concerning items to be considered in our environmental review. We published for public review our preliminary and final determinations regarding which alternatives we intend to carry forward for complete environmental review. These determinations are usually not published until the release of the Draft EIR/EIS, when the alternative selection is a *fait accompli*.

³ This commitment to fully studying routing alternatives does not pre-judge the final Commission decision, but rather carries out the Commission's legal responsibilities for environmental review, ensures the integrity of its final decision, and recognizes the reality that many members of the public want to understand if there are feasible routes that avoid Anza-Borrego Desert State Park.

Through these processes, our environmental staff has identified a series of potential alternatives to the proposed route through Anza-Borrego Desert State Park. One series of alternatives bypasses Anza-Borrego Desert State Park by going west parallel to the existing Southwest Power Link transmission corridor for 36 miles, turning northwest to generally parallel Interstate 8, and eventually reach the Sycamore Canyon Substation. These routes run south of the proposed Sunrise route, and are therefore referred to as the “Southern Route” alternatives.

On June 15, 2007, San Diego Gas & Electric Company (SDG&E) served rebuttal testimony in this proceeding in which it criticized the “Southern Route” alternatives we are analyzing in the environmental review process. SDG&E testified that a Southern Route is “inferior” to its proposed “Northern Route” because potential alternatives being developed along the Southern Route do not have the same future “expandability option” as SDG&E’s proposed Northern Route:

The Northern Route provides for future expansion in a way that the Southern Route does not – instead of a 500 kV “dead end” substation similar to Miguel, the proposed Northern Route permits future interconnections at 230 and 500 kV to SCE or IID. The 500/230 kV substation envisioned as part of the Southern Route would be landlocked by public and tribal lands, and thus unavailable for future 500 kV interconnections...*Thus, the Southern Route alternative does not have the system benefit and system performance of a northern routing which includes optionality for the future, a greater potential for upgrades and better asset utilization, and a more effective linkage to the existing network.* Rebuttal Testimony of Linda Brown at 42-43 (emphases added), excerpt at Attachment A.

On July 10, 2007, during the evidentiary hearings, the assigned Administrative Law Judge (ALJ) pursued the “expandability option” issue with SDG&E Vice President James Avery during cross examination:

Q Is SDG&E arguing that the Commission should make its choice as to what route should be selected if the project were to go forward in part on the basis of whether or not that route would be later expandable to 500 kV deliverable capability?

A I think it's *an important factor that should be taken into consideration, yes*. Record Transcript at 306, lines 17-23, excerpt at Attachment B.

This new SDG&E testimony on the importance of the “expandability option” raises two concerns. First, as quoted above, SDG&E believes, and its senior management has testified under oath, that the “expandability option” is “an important factor that should be taken into consideration” in the Commission’s decision-making. *Id.* at 306, lines 22-23. Second, SDG&E appears to have some specific information about its future expansion plans. In its July 8, 2007 response to a data request, SDG&E set forth a number of potential routes for this future expansion from both the proposed Sunrise Project and the Southern Route alternatives. See Attachment C. Accordingly, this potential future expansion may be more than a merely speculative consequence of the initial project. As such, the Commission must thoughtfully consider how this potential future expansion should be analyzed in the EIR/EIS.⁴ This potential future expansion must also be considered in evaluating the selection of potential alternatives to the proposed project. Under CEQA, the Lead Agency is obligated to evaluate alternatives to the proposed project that could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of

⁴ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d at 396; 14 Cal. Code. Regs. Sec. 15126 (“All phases of a project must be considered when evaluating its impact on the environment.”).

its significant effects. 14 Cal. Code Regs. Sec. 15126.6(a). Therefore, the CPUC must reexamine the alternatives selected for evaluation in the proposed Sunrise Project EIR/EIS in light of the newly disclosed information regarding the “expandability option.”

These new disclosures place the Commission in a difficult position. Consistent with meeting the Commission's legal obligations, the Commission's environmental staff has diligently sought from SDG&E the information necessary to be included in the EIR/EIS related to potential alternative routes and proposals that have the same functionality as the proposed project. On several occasions staff has revised the technical specifications of the potential alternatives that it is analyzing in response to information provided by SDG&E.⁵ Through the data request process, the preliminary and final scoping process, the alternatives notification process, and the ongoing communication between SDG&E and our environmental staff, SDG&E had multiple opportunities prior to June 15 to notify staff of its belief in the importance of the opportunity for expansion at the 500 kV level, and yet it did not do so until June 15. SDG&E did not bring up this issue in the October 2006 public scoping period, nor in the January/February 2007 public scoping period, nor in response to September 2006 data requests regarding the Southern Route alternatives, nor in comments on the preliminary determinations about route alternatives published in January 2007, nor in its most recent extensive May 2007 comments on the "D" version of the Southern Route.⁶

⁵ For example, in response to SDG&E's response to Data Request #4 dated December 6, 2006, staff increased the expandability of the alternatives to 230 kV.

⁶ SDG&E did not submit a comment letter on the first round of public scoping that occurred in October 2006. SDG&E has submitted the following written documents on the environmental scoping process: SDG&E Responses to Energy Division Data Request Number 1, Submittals #1 (October 12, 2006) through #3 (November 17, 2006); SDG&E letter dated February 24, 2007, in response to January 2007 "Notice of Second Round of Scoping Meetings on Alternatives to the Proposed Sunrise Powerlink Project";

Footnote continued on next page

SDG&E's June 15 document reveals, for the first time, its position that alternatives to the proposed Sunrise Project that do not allow for certain specific "expandability options" would be "inferior" (Rebuttal Testimony of Linda Brown at 42, excerpt at Attachment A) and in its July 10 hearing testimony that the "expandability option" is an "important factor that should be taken into consideration" in the Commission's decision-making. Record Transcript at 306, lines 22-23.

Although, this information has come to our attention very late in the environmental review process, we cannot dismiss it. We must instead conduct a legally adequate environmental review of the proposed project and potential alternative routes, taking into consideration the specifics of this expandability option in compliance with the requirements of CEQA and NEPA.

SDG&E's Hearing Testimony Has Just Disclosed That A New Substation Related to the proposed Sunrise Project Would Be Needed To Interconnect New Wind Facilities

In addition to the above described disclosures regarding future expandability at the 500 kV level, SDG&E revealed for the first time during the evidentiary hearings that began earlier this month, that it has been studying for at least 18 months the construction of a substation that, according to SDG&E, relies upon the proposed Sunrise Project to be functional. Given this new testimony, we must now take the time to analyze the relationship between

and "SDG&E Comments Regarding the Modified Route D Alternative" dated June 14, 2007.

the new substation and the proposed Sunrise Project, and determine the extent to which the impacts of this substation should be analyzed in the Draft EIR/EIS.

On July 16 and 17, SDG&E witnesses Ali Yari and Michael McClenahan testified that SDG&E is studying a new 500 kV/230 kV substation that would interconnect new wind generation to the existing Southwest Powerlink but that this wind generation would not be deliverable without the proposed Sunrise Project. Mr. Yari was the first witness to disclose that the substation was being studied by SDG&E to interconnect a proposed wind generation site to the Southwest Powerlink. Record Transcript at 894-896, excerpt at Attachment D.

The next day, SDG&E witness McClenahan provided further details about the location and timing of the substation, confirming that generation connected to the substation would not be deliverable without the proposed Sunrise Project:

Q For the one that you were addressing with the need for the substation, would generation from this project be considered deliverable even if Sunrise were not built?

A My understanding is that it would not.

Q It would not be deliverable without Sunrise?

A Correct. It would not be deliverable without Sunrise.

Q How long have you been negotiating with this bidder?

A They were bid into our 2005 RFO.

Q And have you been negotiating with them since then?

A On and off. The negotiation's to the point where they need to go back and think, and we need to go back and think. So yes, on and off for that period of time. Record Transcript at 1118-19 (emphases added), excerpt at Attachment E.

SDG&E did not include this substation in either its application or in its PEA. Nor did SDG&E describe it in its supplemental testimony that was served on January 26, 2007. As explained above, all relevant parts of a project, including reasonably foreseeable future expansion and other activities that are part of the project, must be included in the project description. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376. In light of these recent disclosures, more factual inquiries are needed to determine whether the new substation being studied by SDG&E must legally be considered part of the proposed Sunrise Project, requiring discussion and analysis in the EIR/EIS. If this is the case, the Commission must comply with its legal obligation to evaluate the potential impacts of these activities and include, if necessary, environmental impact review of the new substation in the Draft EIR/EIS.

The Commission Must Determine the Extent to Which Renewable Development Should be Analyzed in the EIR/EIS

A third issue affecting the scope of the Draft EIR/EIS that has arisen in recent weeks is the extent to which future renewable development must be analyzed as part of our environmental review of the proposed Sunrise Project. Prior to SDG&E's June 15 testimony, the Commission understood, based on the economic analysis underpinning SDG&E's opening testimony filed in August of 2006, that the same level of renewable resource development would occur in the Imperial Valley regardless of whether or not the proposed Sunrise Project was constructed. SDG&E stated the following in its August 2006 economic analysis:

In summary, SDG&E believes the most meaningful and conservative way to value the Sunrise Powerlink on its own merits is to fix the quantity, mix and location of resources outside of the San Diego area and then compare

outcomes without and with the new line. SDG&E Opening Testimony at IV-46, excerpt at Attachment H.

SDG&E's rebuttal testimony filed on June 15, 2007 changes this position. SDG&E's new testimony is that development of new renewable generation is dependent upon the proposed Sunrise Project. For example, in his rebuttal testimony, SDG&E Vice President James Avery rebutted UCAN's position that the level of renewable resources in the Imperial Valley would be approximately the same whether or not the proposed Sunrise Project is built. Avery Rebuttal Testimony at 5-8, excerpt at Attachment I. During Opening Statements on July 9, 2007, SDG&E's Chief Operating Officer, Michael Niggli, stated that there are over 7,100 MWs of interconnection requests in the ISO queue that are dependent upon the proposed Sunrise Project:

The Imperial Valley Region could quickly become one of the state's leading producers of renewable energy. Enormous supplies of solar, wind and geothermal energy are waiting to be developed, but Sunrise Powerlink is needed to cost-effectively export that power to California load centers, not just San Diego. The interest in developing these resource is staggering. As of July 2nd, there is 7,144 megawatts of renewable energy projects in the CAISO queue that could connect to the SDG&E system. We also received bids for approximately 5,000 megawatts of renewable resources in our latest RFO, but without new transmission, many, if not most, of these projects will stall or fail. Record Transcript at 97-98, excerpt at Attachment J.

SDG&E's new position, that development of renewable facilities is dependent upon the proposed Sunrise Project, was reiterated by two other SDG&E witnesses in SDG&E's rebuttal testimony, and by SDG&E witnesses testifying during the hearings that began on July 9. *See* Rebuttal Testimony of William Kemp at 2-6, excerpt at Attachment K; Cross Examination of James

Avery, Record Transcript at 200-202, excerpt at Attachment L, and Rebuttal Testimony of Linda Brown, at 49-50, excerpt at Attachment M.

As discussed above, CEQA and NEPA require that actions that cannot or will not proceed unless the proposed action occurs first or simultaneously are considered “connected actions” and must be analyzed as part of the project. *See* 40 CFR Sec. 1508.25(a)(1). In light of SDG&E’s new testimony on the impact of the proposed Sunrise Project on renewables, our staff must take the time to determine the extent to which these new renewable generation facilities must be analyzed to ensure our Draft EIR/EIS is compliant with CEQA and NEPA.

Schedule Adjustment

I must extend the schedule of this proceeding to allow our environmental staff the opportunity to address these newly-raised issues. I do this with great reluctance and regret. It is with reluctance because our staff has worked so hard to keep the schedule in this proceeding on track. It is with regret because SDG&E could have avoided this delay. As detailed above, SDG&E made numerous filings prior to June 15,⁷ which could and should have disclosed information on these three issues. I will extend the schedule so that our staff may properly study the impact of these three new issues on the environmental review of the proposed Sunrise Project and issue a Draft EIR/EIS that is legally adequate..

By extending the schedule for the release of the Draft EIR/EIS, I am necessarily extending the timing of a final Commission decision. In all

⁷ *See* footnote 6, above.

likelihood, this means that the proposed Sunrise Project, if approved, could not be in service by 2010.

I am committed to ensuring that we do not jeopardize SDG&E's ability to meet its RPS obligations, and to serve its customers reliably and economically. Consequently, I have examined the potential impact of not having the proposed Sunrise Project in service by 2010 from three perspectives: whether SDG&E will be able to meet the state's RPS goals; the economic impact on ratepayers; and the reliability impacts. As set forth below, while there is dispute on some of these issues, there is also evidence in the record that if the proposed Sunrise Project is approved, the delay necessitated here is not significant.

With regard to the state's RPS goals, SDG&E's testimony in this case states that the proposed Sunrise Project is not needed to meet its RPS goals for 2010, or even to meet goals of 33% RPS by 2020: "Hypothetically, given the CAISO's open access regime, it is possible for SDG&E to meet its 2010 RPS goals without the Sunrise Powerlink." SDG&E Opening Testimony at III-15, excerpt at Attachment F. SDG&E's witness Jan Strack amplified this point in its Supplemental Testimony submitted on January 26, 2007: "The existing transmission network between the Imperial Valley and the San Diego basin, and between the Tehachapi area and the San Diego basin, is physically capable of delivering enough renewable energy to meet San Diego area load serving entities' shares of California's renewable energy goals for years 2010 (20% of retail sales) and 2020 (33% of retail sales)." Strack Supplemental Testimony at 64, excerpt at Attachment G. Thus, according to SDG&E's own testimony, extending the schedule in this proceeding will *not* cause SDG&E to run afoul of the RPS requirements.

With regard to the economic and reliability need for the line, some parties have testified that delaying the online date for the proposed Sunrise Project could be beneficial to ratepayers while still maintaining system reliability. For example, using its base case assumptions for the costs for renewable resources, the CAISO's testimony is that if construction costs for the proposed Sunrise Project do not escalate at more than 3.1% per year, then system reliability can be maintained until at least 2016 at a lower cost to ratepayers without the proposed Sunrise Project. Even at a 5.5% annual escalation rate, the CAISO projects that the optimal online date for the proposed Sunrise Project would be 2013. CAISO Rebuttal Testimony at 54-56, excerpt at Attachment N. UCAN and DRA both advocate that postponing the online date for the proposed Sunrise Project beyond 2013 would benefit ratepayers and maintain system reliability. UCAN Opening Testimony of Michael Shames at 13. DRA Opening Testimony of Kevin Woodruff at 46. SDG&E states that it has options available to it to meet its reliability targets in the event that the proposed Sunrise Project is not online by 2010, including the use of existing generation or bringing online new peaking units. SDG&E Supplemental Testimony at 55-56, excerpt at Attachment O. Mr. Avery also discussed these options in cross-examination. Record Transcript at 330-331, excerpt at Attachment P.

I recognize that SDG&E has filed testimony claiming that there are economic benefits to ratepayers if the proposed Sunrise Project is in service by 2010, and I do not prejudge this disputed issue here. The Commission will address this issue in its final decision. However, two things are certain: we will comply with CEQA/NEPA, and the resulting delay is unlikely to affect in a

significant way the achievements of the goals identified by SDG&E in pursuing this project.

Other Considerations Regarding the Schedule

There are two other factors that mitigate the impact that this schedule extension will have.

On July 18, during the second week of the Phase I hearings that commenced on July 9, 2007, SDG&E identified potentially serious errors in its economic assessment of the proposed Sunrise Project. Because SDG&E has stated that it needs time to identify and to correct errors in its testimony, the CAISO and other intervenors requested a delay in presenting their own witnesses until after SDG&E revises its testimony. As a result of SDG&E's discovery of the errors in its testimony, Phase I hearings in this proceeding have been postponed until July 30, at the earliest.

The extent of the delay in the hearings will be determined once SDG&E has fully vetted its economic analysis and parties have had a chance to understand the impact of SDG&E's revisions on their own testimony. It is possible that parties will need to conduct discovery on SDG&E's revised testimony, and that we will need to allow additional testimony by intervenors, and additional rebuttal testimony by SDG&E. While this delay in the hearings is unfortunate, such a delay is necessary to develop a full and accurate record in Phase I. Again, this delay is due to errors in SDG&E's own testimony.

Given the uncertainty in the schedule for conclusion of the Phase I hearings, it is not possible at this time to issue a new schedule for the entire proceeding. Once the impact of the revisions to SDG&E's economic testimony on other parties' testimony, as well as an assessment of the time necessary to

examine the new information discussed above has been determined, I will issue a new schedule for the proceeding addressing these issues. In the interim, I adopt the schedule for CEQA/NEPA-related activities set forth below.

Second, I am informed that SDG&E continues to delay in responding to environmental staff questions on several key issues. For example, SDG&E has most recently delayed in providing responses to several data requests regarding one of the alternative Southern Routes. These delays make it impossible for staff to timely respond to the SDG&E concerns raised regarding that potential alternative. SDG&E has also delayed in providing biological resource data for certain rare plant and animal species.

We cannot do this job alone. As I extend this schedule to address these SDG&E-caused delays, I am hopeful that SDG&E will recognize the role it has played here and that it will step up to the plate and meet its obligations to provide staff the complete information they need to do their job.

IT IS RULED that:

The schedule for this proceeding shall be modified as follows:

- The draft EIR/EIS shall be published on or before January 8, 2008;
- Comments on the draft EIR/EIS shall be due 90 days after publication;
- The Final EIR/EIS shall be published on or before June 6, 2008.

A ruling will issue shortly providing the remaining details of the modified schedule in order to address the recent suspension of the Phase I hearings.

Dated July 24, 2007, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Commissioner

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INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated July 24, 2007, at San Francisco, California.

/s/ KE HUANG

Ke Huang

***** SERVICE LIST *****
Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

***** APPEARANCES *****

Diana Linsday
ANZA-BORREGO FOUNDATION & INSTITUTE
PO BOX 2001
BORREGO SPRINGS CA 92004
(760) 767-0446
dlindsay@sunbeltpub.com
For: Anza-Borrego Foundation & Institute

Shawn D. Hagerty
City Of Attorney
BEST BEST & KRIEGER LLP
655 W. BROADWAY, 15TH FLOOR
SAN DIEGO CA 92101-3301
(619) 525-1300
shagerty@bbkllaw.com
For: The City of Santee

Connie Bull
24572 RUTHERFORD ROAD
RAMONA CA 92065
conniebull@cox.net

Sara Feldman
CA STATE PARKS FOUNDATION
714 W. OLYMPIC BLVD., SUITE 717
LOS ANGELES CA 90015
(213) 748-7458
sara@calparks.org
For: CA State Parks Foundation

David Lloyd
Attorney At Law
CABRILLO POWER I, LLC
4600 CARLSBAD BLVD.
CARLSBAD CA 92008
(760) 268-4069
david.lloyd@nrgenergy.com
For: Cabrillo Power I, LLC

Michael L. Wells
CALIFORNIA DEPARTMENT OF
PARKS & RECREATION
200 PALM CANYON DRIVE
BORREGO SPRINGS CA 92004
(760) 767-4037
mwells@parks.ca.gov

Bradly S. Torgan
Attorney At Law
CALIFORNIA DEPT. OF PARKS & RECREATION
1416 NINTH STREET, ROOM 1404-06
SACRAMENTO CA 95814
(916) 653-9905
btorgan@parks.ca.gov
For: California Dept. of Parks & Recreation

Karen Norene Mills
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5655
kmills@cbbf.com
For: California Farm Bureau Federation

Judith B. Sanders
Attorney At Law
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM CA 95630
(916) 608-7143
jsanders@caiso.com
For: California Independent System Operator

David Hogan
CENTER FOR BIOLOGICAL DIVERSITY
PO BOX 7745
SAN DIEGO CA 92167
(760) 809-9244
dhogan@biologicaldiversity.org

Michael P. Calabrese
CITY ATTORNEY'S OFFICE
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO CA 92101
(619) 533-5872
mcalabrese@sandiego.gov
For: City of San Diego

Frederick M. Ortlieb
Office Of City Attorney
CITY OF SAN DIEGO
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO CA 92101
(619) 236-6318
fortlieb@sandiego.gov
For: City of San Diego

Mary Aldern
CAROLYN MORROW, JOE RAUH
COMMUNITY ALLIANCE FOR SENSIBLE ENERGY
PO BOX 321
WARNER SPRINGS CA 92086
(760) 782-9036
hikermomma1@yahoo.com

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL

A0608010 LIST

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Denis Trafecanty
COMMUNITY OF SANTA YSABEL & RELATED
COMM
PO BOX 305
SANTA YSABEL CA 92070
(760) 703-1149
denis@vitalityweb.com
For: Self

Joe Como
Legal Division
RM. 5033
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2381
joc@cpuc.ca.gov

David Kates
DAVID MARK AND COMPANY
3510 UNOCAL PLACE, SUITE 200
SANTA ROSA CA 95403-5571
(707) 570-1866
dkates@sonic.net
For: The Nevada Hydro Company

Jeffrey P. Gray
Attorney At Law
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
jeffgray@dw.com

William F. Dietrich
Attorney At Law
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK CA 94598-3535
(415) 297-2356
dietrichlaw2@earthlink.net
For: California State Parks Foundation and Anza-Borrego
Foundation

Donald C. Liddell
Attorney At Law
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com
For: Stirling Energy Systems

Jeffery D. Harris
Attorney At Law
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
jdh@eslawfirm.com

Norman J. Furuta
Attorney At Law
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO CA 94103-1399
(415) 503-6994
norman.furuta@navy.mil
For: DEPARTMENT OF THE NAVY

Vidhya Prabhakarak
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
vprabhakaran@goodinmacbride.com
For: LS Power; South Bay Replacement Project, LLC

Brian T. Cragg
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: LS Power; South Bay Replacement Project, LLC

Vidhya Prabhakaran
GOODIN,MACBRIDE,SQUERI,DAY,LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
vprabhakaran@goodinmacbride.com
For: South Bay Replacement Project, LLC

Carrie Downey
HORTON KNOX CARTER & FOOTE
895 BROADWAY
ELCENTRO CA 92243
(760) 352-2821
cadowney@san.rr.com
For: Imperial Irrigation District

***** SERVICE LIST *****

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A0608010 LIST

A0512014

Heidi Farkash
JOHN & HEIDI FARKASH TRUST
PO BOX 576
RANCHO SANTA FE CA 92067
(858) 756-3594
jhfk@pacbell.net
For: Farkash Ranch in Santa Ysabel

John W. Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130
(858) 720-6352
jleslie@luce.com
For: Coral Power, LLC and Energia Azteca/Energia de
Baja California (La Rosita)

S. Nancy Whang
DAVID L. HUARD, RANDALL W. KEEN
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
nwhang@manatt.com
For: The City of Santee

Scot Martin
PO BOX 1549
BORREGO SPRINGS CA 92004
(760) 767-1045
scotmartin478@msn.com

Joetta Mihalovich
11705 ALDERCREST POINT
SAN DIEGO CA 92131

Arthur Fine
DOUGLAS W. BORDEWIECK
MITCHELL SILBERBERG & KNUPP LLP
11377 W. OLYMPIC BLVD.
LOS ANGELES CA 90064-1683
(310) 312-2000
sptp@msk.com
For: David H. Batchelder

Diane J. Conklin
MUSSEY GRADE ROAD ALLIANCE
PO BOX 683
RAMONA CA 92065
(760) 787-0794
dj0conklin@earthlink.net

Don Wood Sr.
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA CA 91941
(619) 463-9035
dwood8@cox.net

Michael Page
17449 OAK HOLLOW ROAD
RAMONA CA 92065-6758
(760) 788-9319
oakhollowranch@wildblue.net
For: Starlight Mountain Estates Owners

Kevin Lynch
PPM ENERGY INC.
1125 NW COUCH ST., SUITE 700
PORTLAND OR 97209

Elizabeth Edwards
RAMONA VALLEY VINEYARD ASSOCIATION
26502 HIGHWAY 78
RAMONA CA 92065
(760) 789-8673
edwrdsgrfx@aol.com
For: Ramona Valley Vineyard Assoc.

Harvey Payne
RANCHO PENASQUITOS CONCERNED CITIZENS
13223 - 1 BLACK MOUNTAIN ROAD, 264
SAN DIEGO CA 92129
(619) 515-1194
hpayne@sdgllp.com
For: RANCHO PENASQUITOS CONCERNED CITIZENS

Rory Cox
AARON QUINTANAR/BILL POWERS
RATEPAYERS FOR AFFORDABLE CLEAN ENERGY
311 CALIFORNIA STREET, SUITE 650
SAN FRANCISCO CA 94104
(415) 399-8850 X 302
rcox@pacificenvironment.org
For: C/O Pacific Enviroment

Keith Ritchey
Powerlink Issues Manager
8744 CREEKWOOD LANE
SAN DIEGO CA 92129
(858) 484-4429
kritche@san.rr.com
For: West Chase Homeowner's Association

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Billy Blattner
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO CA 94102
(415) 202-9986
wblattner@semprautilities.com
For: San Diego Gas & Electric

E. Gregory Barnes
Attorney At Law
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ 13D
SAN DIEGO CA 92101
(619) 699-5019
gbarnes@sempira.com
For: San Diego Gas & Electric

James F. Walsh
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET
SAN DIEGO CA 92101
(619) 699-5022
jwalsh@sempira.com
For: San Diego Gas & Electric Company

Kevin O'Beirne
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
(858) 654-1765
ko'beirne@semprautilities.com
For: San Diego Gas & Electric

Patricia C. Schnier
BARBARA E. SCHNIER, ESQ.
14575 FLATHEAD RD.
APPLE VALLEY CA 92307
(760) 240-7668
barbschnier@yahoo.com
For: Self

Osa L. Wolff
Attorney At Law
SHUTE, MIHALY & WEINBERGER, LLC
396 HAYES STREET
SAN FRANCISCO CA 94102
(415) 552-7272
wolff@smwlaw.com
For: Cities of Temecula, Murrieta & Hemet

Paul Blackburn
SIERRA CLUB, SAN DIEGO CHAPTER
3820 RAY STREET
SAN DIEGO CA 92104
(619) 299-1741
sdenergy@sierraclubsandiego.org
For: Sierra Club, San Diego Chapter

Thomas A. Burhenn
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-9652
thomas.burhenn@sce.com
For: Southern California Edison

Nicholas Sher
Legal Division
RM. 4007
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-4232
nms@cpuc.ca.gov

Justin Augustine
THE CENTER FOR BIOLOGICAL DIVERSITY
1095 MARKET ST., SUITE 511
SAN FRANCISCO CA 94103
(415) 436-9682 302
jaugustine@biologicaldiversity.org
For: The Center for Biological Diversity

Michel Peter Florio
Attorney At Law
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
mflorio@turn.org
For: TURN

Michael Shames
Attorney At Law
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO CA 92103
(619) 696-6966
mshames@ucan.org
For: UCAN

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Edward Gorham
WESTERNERS INCENSED BY WRECKLESS
ELECTRI
4219 LOMA RIVIERA LANE
SAN DIEGO CA 92110
(619) 990-3848
gorhamedward@cox.net
For: Self

Pam Whalen
24444 RUTHERFORD ROAD
RAMONA CA 92065
(760) 440-0202
pwhalen2@cox.net

Arnold B. Podgorsky
WRIGHT & TALISMAN, P.C.
1200 G STREET, N.W., SUITE 600
WASHINGTON DC 20005
(202) 393-1200
For: The Nevada Hydro Company

Michael J. Thompson
Attorney At Law
WRIGHT & TALISMAN, PC
1200 G STREET, N.W., STE 600
WASHINGTON DC 20005
(202) 393-1200
thompson@wrightlaw.com
For: The Nevada Hydro Company

***** STATE EMPLOYEE *****

Susan Lee
ASPEN ENVIRONMENTAL GROUP
235 MONTGOMERY STREET, SUITE 935
SAN FRANCISCO CA 94104
(415) 955-4775 X 203
slee@aspeneg.com

Tom Murphy
Vp., Sacramento Operations
ASPEN ENVIRONMENTAL GROUP
8801 FOLSOM BLVD., SUITE 290
SACRAMENTO CA 95826
(916) 379-0350
tmurphy@aspeneg.com

Billie C. Blanchard
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2068
bcb@cpuc.ca.gov

Traci Bone
Legal Division
RM. 5206
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2048
tbo@cpuc.ca.gov

Jack Burke
Legislative Affairs Manager
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., SUITE 100
SAN DIEGO CA 92123
(858) 244-7295
jack.burke@energycenter.org

Clare Laufenberg
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO CA 95814
(916) 654-4859
Claufenb@energy.state.ca.us

Judy Grau
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET MS-46
SACRAMENTO CA 95814-5512
(916) 653-1610
jgrau@energy.state.ca.us

Marc Pryor
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS 20
SACRAMENTO CA 95814
(916) 653-0159
mpryor@energy.state.ca.us

Scott Cauchois
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1525
wsc@cpuc.ca.gov
For: DRA

Laurence Chaset
Legal Division
RM. 5131
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5595
lau@cpuc.ca.gov

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Robert Elliott
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2527
rae@cpuc.ca.gov

Thomas Flynn
Energy Division
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 324-8689
trf@cpuc.ca.gov

Scott Logan
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1418
sjl@cpuc.ca.gov
For: DRA

Silvia Lopez
Legal Division
505 VAN NESS AVE
San Francisco CA 94102 3298
sml@cpuc.ca.gov

David Ng
Executive Division
RM. 5207
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1791
dhn@cpuc.ca.gov

Marcus Nixon
Consumer Service & Information Division
RM. 500
320 WEST 4TH STREET SUITE 500
Los Angeles CA 90013
(213) 576-7057
mrx@cpuc.ca.gov

Terrie D. Prosper
Executive Division
RM. 5301
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2160
tdp@cpuc.ca.gov

Donald R. Smith
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1562
dsh@cpuc.ca.gov

Steven A. Weissman
Administrative Law Judge Division
RM. 5107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2195
saw@cpuc.ca.gov

Keith D White
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5473
kwh@cpuc.ca.gov

***** INFORMATION ONLY *****

Jaleh (Sharon) Firooz, P.E.
ADVANCED ENERGY SOLUTIONS
17114 TALLOW TREE LANE
SAN DIEGO CA 92127
(858) 229-0023
jfirooz@iesnet.com

Linda A. Carson
Executive Director
ANZA-BORREGO FOUNDATION
PO BOX 2001
BORREGO SPRINGS CA 92004
(760) 767-0446

Brewster Birdsall
ASPEN ENVIRONMENTAL GROUP
235 MONTGOMERY STREET, SUITE 935
SAN FRANCISCO CA 94104
(415) 955-4775
bbirdsall@aspeneg.com

Philippe Auclair
11 RUSSELL COURT
WALNUT CREEK CA 94598
(925) 588-9109
philha@astound.net

***** SERVICE LIST *****
Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Bob & Margaret Barelmann
6510 FRANCISCAN ROAD
CARLSBAD CA 92011
(760) 497-7777
ecp9@roadrunner.com

Jim Bell
4862 VOLTAIRE ST.
SAN DIEGO CA 92107
(619) 758-9020
jimbellesi@cox.net

Pat/Albert Bianeze
1223 ARMSTRONG CIRCLE
ESCONDIDO CA 92027
patricia_fallon@sbcglobal.net

Eileen Bird
12430 DORMOUSE ROAD
SAN DIEGO CA 92129
(858) 538-9595
sanrocky@aol.com

Donna Tisdale
BOULEVARD SPONSOR GROUP
PO BOX 1272
BOULEVARD CA 91905
(619) 766-4170
donnatisdale@hughes.net

David Branchcomb
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE CA 95662
(916) 988-5676
david@branchcomb.com

Phillip & Eliane Breedlove
1804 CEDAR STREET
RAMONA CA 92065
(858) 618-5087
wolfmates@cox.net

John & Phyllis Bremer
PO BOX 510
SANTA YSABEL CA 92070
gecko_greens@juno.com

Lynda Kastoll
Realty Specialist
BUREAU OF LAND MANAGEMENT
EL CENTRO FIELD OFFICE
1661 SOUTH 4TH STREET
EL CENTRO CA 92243

Thomas Zale
BUREAU OF LAND MANAGEMENT
1661 SO. 4TH STREET
EL CENTRO CA 92243
(760) 337-4420
Thomas_Zale@blm.gov

G. Alan Comnes
CABRILLO POWER I LLC
3934 SE ASH STREET
PORTLAND OR 97214
(503) 239-6913
alan.comnes@nrgenergy.com

Irene Stillings
Executive Director
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8520 TECH WAY, SUITE 110
SAN DIEGO CA 92123
Irene.stillings@energycenter.org

Jennifer Porter
Policy Analyst
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO CA 92123
(858) 244-1180
jennifer.porter@energycenter.org

Sephra A. Ninow
Policy Analyst
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVENUE, SUITE 100
SAN DIEGO CA 92123
(858) 244-1186
sephra.ninow@energycenter.org

J.A. Savage
CALIFORNIA ENERGY CIRCUIT
3006 SHEFFIELD AVE
OAKLAND CA 94602
(510) 534-9109
editorial@californiaenergycircuit.net

CALIFORNIA ENERGY MARKETS
517 - B POTRERO AVENUE
SAN FRANCISCO CA 94110
(415) 552-1764
cem@newsdata.com

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Legal & Regulatory Department
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
e-recipient@caiso.com
For: CALIFORNIA ISO

Steven Siegel
CENTER FOR BIOLOGICAL DIVERSITY
3421 PARK PLACE
EVANSTON IL 60201
(619) 241-6409
ssiegel@biologicaldiversity.org

Tom Blair
Energy Administrator
CITY OF SAN DIEGO
9601 RIDGEHAVEN COURT, SUITE 120
SAN DIEGO CA 92123-1636
(858) 492-6001
TBlair@sandiego.gov

Dahvia Locke
Enironmental Resource Manager
COUNTY OF SAN DIEGO
5201 RUFFIN ROAD, SUITE B
SAN DIEGO CA 92123-1666
(858) 694-3075
Dahvia.Lynch@sdcounty.ca.gov

George Courser
3142 COURSER AVENUE
SAN DIEGO CA 92117
(858) 273-2426
gcourser@hotmail.com

David W. Carey
DAVID CAREY & ASSOCIATES, INC.
PO BOX 2481
JULIAN CA 92036
(760) 765-3266
dandbcarey@julianweb.com

Glenn E. Drown
PO BOX 330
SANTA YSABEL CA 92070
(760) 765-3381
gedrown@mindspring.com

Audra Hartmann
DYNEGY, INC.
980 NINTH STREET, SUITE 2130
SACRAMENTO CA 95814
(916) 441-6242
Audra.Hartmann@Dynegy.com

Joseph M. Paul
Senior Corporate Counsel
DYNEGY, INC.
2420 CAMINO RAMON, SUITE 215
SAN RAMON CA 94583
(925) 866-4909
Joe.paul@dynegy.com

Andrew B. Brown
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
abb@eslawfirm.com

Dan Perkins
ENERGY SMART HOMES
983 PHILLIPS ST.
VISTA CA 92083
(760) 315-2055
perkydanp@yahoo.com

Rebecca Pearl
Policy Advocate, Clean Bay Campaign
ENVIRONMENTAL HEALTH COALITION
401 MILE OF CARS WAY, STE. 310
NATIONAL CITY CA 91950
(619) 474-0220
rebeccap@environmentalhealth.org
For: ENVIRONMENTAL HEALTH COALITION

Epic Intern
EPIC/USD SCHOOL OF LAW
5998 ALCALA PARK
SAN DIEGO CA 92110
(619) 260-4806
usdepic@gmail.com

Steve/Carolyn Esposito
37784 MONTEZUMA VALLEY ROAD
RANCHITA CA 92066
(760) 782-9011
cesposit@sdcoe.k12.ca.us

***** SERVICE LIST *****
Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Mary Kay Ferwalt
24569 DEL AMO ROAD
RAMONA CA 92065
(760) 789-9192
mkferwalt@yahoo.com

Julie L. Fieber
FOLGER LEVIN & KAHN LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO CA 94111
(415) 986-2800
jfieber@flk.com

Diane I. Fellman
Attorney At Law
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
diane_fellman@fpl.com

Darrell Freeman
1304 ANTRIM DR.
ROSEVILLE CA 95747
ddf Freeman@yahoo.com

Willie M. Gaters
1295 EAST VISTA WAY
VISTA CA 92084
(858) 829-1983
williegaters@earthlink.net

Bonnie Gendron
4812 GLENSIDE ROAD
SANTA YSABEL CA 92070
(760) 765-2132
bgendron@nethere.com

Richard Lauckhart
GLOBAL ENERGY
2379 GATEWAY OAKS DRIVE, SUITE 200
SACRAMENTO CA 95833
(916) 609-7769
rlauckhart@globalenergy.com

Carolyn Morrow
GOLIGHTLY FARMS
36255 GRAPEVINE CANYON ROAD
RANCHITA CA 92066
(619) 977-9961
Csmmarket@aol.com

Laurel Granquist
PO BOX 2486
JULIAN CA 92036
celloinpines@sbcglobal.net

John Grisafi
PO BOX 310125
GUATAY CA 91931

Karl Higgins
President
HIGGINS & ASSOCIATES
1517 ROMA DRIVE
VISTA CA 92083
(760) 727-5227
karlhiggins@adelphia.net

Christopher P. Jeffers
24566 DEL AMO ROAD
RAMONA CA 92065
polo-player@cox.net

Kim Kiener
504 CATALINA BLVD
SAN DIEGO CA 92106
(619) 990-7046
kмкиener@cox.net

Glenda Kimmerly
PO BOX 305
SANTA YSABEL CA 92070
kimmerlys@yahoo.com

Brian Kramer
PO BOX 516
JULIAN CA 92036-0516
(760) 765-3177
colobiker@gmail.com

Henry Martinez
LADWP
111 N. HOPE ST., ROOM 921
LOS ANGELES CA 90012
(213) 367-4435
Henry.Martinez@ladwp.com

Lorraine A. Paskett
LADWP
111 N. HOWARD ST., ROOM 1536
LOS ANGELES CA 90012
(213) 367-8698
Lorraine.Paskett@ladwp.com

***** SERVICE LIST *****
Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

Juile B. Greenisen
LATHAM & WATKINS LLP
SUITE 1000
555 ELEVENTH STREET, NW
WASHINGTON DC 20004-1304
(202) 637-2142
juile.greenisen@lw.com

Michael J. Gergen
LATHAM & WATKINS LLP
SUITE 1000
555 ELEVENTH STREET, NW
WASHINGTON DC 20004-1304
(202) 637-2200
michael.gergen@lw.com

Richard W. Raushenbush
Attorney At Law
LATHAM & WATKINS LLP
505 MONTGOMERY STREET, SUITE 2000
SAN FRANCISCO CA 94111
(415) 395-8237
richard.raushenbush@lw.com

Lara Lopez
16828 OPEN VIEW RD
RAMONA CA 92065
soliviasmom@cox.net

Randy S. Howard
LOS ANGELES DEPT. OF WATER AND POWER
111 NORTH HOPE STREET, ROOM 921
LOS ANGELES CA 90012
(213) 367-0381
randy.howard@ladwp.com

Randall W. Keen
Attorney At Law
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
rkeen@manatt.com
For: City of Santee

David L. Huard
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES CA 90064
(310) 312-4000
dhuard@manatt.com
For: City of Santee

David Marcus
PO BOX 1287
BERKELEY CA 94701
(510) 528-0728
dmarcus2@sbcglobal.net

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND CA 94612
(510) 834-1999
mrw@mrwassoc.com

Louis Nastro
PO BOX 942896
SACRAMENTO CA 92860-0001
(916) 653-0524
Lnastro@parks.ca.gov

Abbas M. Abed
Associate Director
NAVIGANT CONSULTING, INC.
402 WEST BROADWAY, SUITE 400
SAN DIEGO CA 92101
(619) 595-4817
aabed@navigantconsulting.com

Dave Downey
NORTH COUNTY TIMES
207 E. PENNSYLVANIA AVENUE
ESCONDIDO CA 92025
(760) 740-5442
ddowney@nctimes.com

Deanna Spehn
Policy Director
OFFICE OF SENATOR CHRISTINE KEHOE
39TH STATE SENATE DISTRICT
2445 5TH AVENUE, SUITE 200
SAN DIEGO CA 92101
(619) 645-3133
deanna.spehn@sen.ca.gov

Peter Schultz
OLD JULIAN CO.
PO BOX 2269
RAMONA CA 92065
(760) 789-0987
oldjulianco@integrity.com

***** SERVICE LIST *****

Last Update on 24-JUL-2007 by: LIL
A0608010 LIST
A0512014

David T. Kraska
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-7503
dtk5@pge.com

Jason Yan
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B13L
SAN FRANCISCO CA 94105
jay2@pge.com

Katarzyna M. Smolen
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-4208
KMSn@pge.com

Michael S. Porter
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., MAIL CODE 13L RM 1318
SAN FRANCISCO CA 94105
(415) 973-6625
mspe@pge.com

Scott Kardel
PALOMAR OBSERVATORY
PO BOX 200
PALOMAR MOUNTAIN CA 92060
(760) 742-2111
WSK@astro.caltech.edu

Nancy Parinello
PO BOX 516
JULIAN CA 92036-0516
(760) 765-3177
nparinello@gmail.com

Ken Bagley
R.W. BECK
14635 N. KIERLAND BLVD., SUITE 130
SOCTTSDALE AZ 95254
(480) 367-4282
kbagley@rwbeck.com

John Raifsnider
PO BOX 121
JULIAN CA 92036-0121
(760) 765-2722
skyword@sbcglobal.net

Carolyn A. Dorroh
RAMONA COMMUNITY PLANNING GROUP
17235 VOORHES LANE
RAMONA CA 92065
(760) 789-4429
carolyn.dorroh@cubic.com

Joseph Rauh
RANCHITA REALTY
37554 MONTEZUMA VALLEY RD
RANCHITA CA 92066
(760) 782-3632
joe@ranchitarealty.com
For: RANCHITA REALTY

Aaron Quintanar
RATE PAYERS FOR AFFORDABLE CLEAN ENERGY
311 CALIFORNIA STREET, STE 650
SAN FRANCISCO CA 94104
(415) 399-8850 X302
rcox@pacificenvironment.org

Paul Ridgway
3027 LAKEVIEW DR.
PO BOX 1435
JULIAN CA 92036-1435
cpuc@92036.com

Stephen Rogers
1340 OPAL STREET
SN DIEGO CA 92109
srogers647@aol.com

Susan Freedman
Senior Regional Energy Planner
SAN DIEGO ASSOCIATION OF GOVERNMENTS
401 B STREET, SUITE 800
SAN DIEGO CA 92101
(619) 699-7387
sfr@sandag.org

Central Files
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO CA 92123
(858) 654-1766
centralfiles@semprautilities.com

Matthew Jumper
SAN DIEGO INTERFAITH HOUSING FOUNDATION
7956 LESTER AVE
LEMON GROVE CA 91945
mjumper@sdihf.org
For: SAN DIEGO INTERFAITH HOUSING FOUNDATION

***** SERVICE LIST *****
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Kellie Smith
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 4038
SACRAMENTO CA 95814
(916) 657-4107
kellie.smith@sen.ca.gov

Paul G. Scheuerman
SHEUERMAN CONSULTING
3915 RAWHIDE RD.
ROCKLIN CA 95677
(916) 630-7073
PGS@IEEE.org

Sheridan Pauker
SHUTE,MIHALY & WEINBERGER LLP
396 HAYES STREET
SAN FRANCISCO CA 94102
(415) 552-7272
wolff@smwlaw.com
For: Cities of Temecula, Hemet and Murrieta

Micah Mitrosky
SIERRA CLUB
3820 RAY STREET
SAN DIEGO CA 92104-3623
(619) 299-1797
mmitrosky@sierraclubsandiego.org

Darell Holmes
Transmission Manager
SOUTHERN CALIFORNIA EDISON
2244 WALNIT GROVE AVE, 238M, QUADB, G01
ROSEMEAD CA 91770
(626) 302-6498
darell.holmes@sce.com

Bruce Foster
Vice President
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO CA 94102
(415) 775-1856
bruce.foster@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com

Clay E. Faber
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST FIFTH STREET, GT-14D6
LOS ANGELES CA 90013
(213) 244-5129
cfaber@semprautilities.com
For: San Diego Gas & Electric Company

Wally Besuden
President
SPANGLER PEAK RANCH, INC
PO BOX 1959
ESCONDIDO CA 92033
(702) 429-7525

Craig Rose
THE SAN DIEGO UNION TRIBUNE
PO BOX 120191S
SAN DIEGO CA 92112-0191
craig.rose@uniontrib.com

William Tulloch
28223 HIGHWAY 78
RAMONA CA 92065
(760) 789-3854

Scott J. Anders
Research/Administrative Center
UNIVERSITY OF SAN DIEGO - LAW
5998 ALCALA PARK
SAN DIEGO CA 92110
(619) 260-4589
scottanders@sandiego.edu

Martha Baker
VOLCAN MOUNTAIN PRESERVE FOUNDATION
PO BOX 1625
JULIAN CA 92036
(760) 765-2300
vmp@sbcglobal.net

David Voss
502 SPRINGFIELD AVENUE
OCEANSIDE CA 92057
(760) 630-1070
dwvoss@cox.net

Lon W. House
WATER & ENERGY CONSULTING
4901 FLYING C RD.
CAMERON PARK CA 95682
(530) 676-8956
lonwhouse@waterandenergyconsulting.com

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A0512014

Ron Webb
PO BOX 375
SANTA YSABEL CA 92070
webron7@yahoo.com

Daniel Suurkask
WILD ROSE ENERGY SOLUTIONS, INC.
430 8170 50TH STREET
EDMONTON AB T6B 1E6
CANADA
daniel@wildroseenergy.com

Suzanne Wilson
PO BOX 798
IDYLLWILD CA 92549
(951) 492-9836
swilson@pcta.org

W. Kent Palmerton
WK PALMERTON ASSOCIATES, LLC
2106 HOMEWOOD WAY, SUITE 100
CARMICHAEL CA 95608
kent@wkpalmerton.com

Kevin Woodruff
WOODRUFF EXPERT SERVICES, INC.
1100 K STREET, SUITE 204
SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com

Henry Zaininger
ZAININGER ENGINEERING COMPANY, INC.
1718 NURSERY WAY
PLEASANTON CA 94588
hzaininger@aol.com

(END OF SERVICE LIST)